

## ORDINANCE NO. \_\_\_\_\_

1           AN ORDINANCE amending Title 8 of the Lincoln Municipal Code relating to  
2 Health and Sanitation by creating a new Chapter 8.52 entitled the Graffiti Abatement Act by adding  
3 a new section numbered 8.52.010 to set forth the title of the chapter; adding a new section numbered  
4 8.52.020 to set forth the purpose of the chapter; adding a new section numbered 8.52.030 to set forth  
5 definitions used in the chapter; adding new section numbered 8.52.040 to prohibit the act of placing  
6 graffiti on any public or private building and to prohibit the failure to remove graffiti; adding a new  
7 section numbered 8.52.050 to define graffiti as a public nuisance and provide for notice and  
8 abatement procedures; adding a new section numbered 8.52.060 to provide the means and conditions  
9 for appealing a notice and order to abate graffiti; adding a new section numbered 8.52.070 to provide  
10 for the enforcement of the provisions of the chapter; and adding a new section numbered 8.52.080  
11 to provide penalties for violations of the chapter.

12           BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

13           Section 1. That Title 8 of the Lincoln Municipal Code be amended by adding a new  
14 section numbered 8.52.010 to read as follows:

15       **8.52.010       Title.**

16           This chapter shall be known as the Graffiti Abatement Act.

17           Section 2. That Title 8 of the Lincoln Municipal Code be amended by adding a new  
18 section numbered 8.52.020 to read as follows:

19       **8.52.020       Purpose.**

20           The City Council does hereby declare graffiti to be a public nuisance that constitutes a blight  
21 and health, safety and general welfare risk to the residents of Lincoln. Unless it is removed from  
22 public and private properties in a timely manner, it tends to remain, and other properties are then the  
23 target of graffiti vandalism with the result that entire neighborhoods and the community is  
24 depreciated in value and made a less desirable place to live. Therefore, the City Council authorizes

1 the Mayor to administer and enforce this chapter within the city and within three miles of the  
2 corporate limits of the city and outside of any other organized city or village.

3 Section 3. That Title 8 of the Lincoln Municipal Code be amended by adding a new  
4 section numbered 8.52.030 to read as follows:

5 **8.52.030 Definitions.**

6 **Authorized** shall mean with the consent of the owner.

7 **Graffiti** shall mean any inscription, word, figure, painting or other defacement that is  
8 written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to  
9 any surface of public or private property by any graffiti implement, to the extent that the graffiti was  
10 unauthorized by the owner or occupant of the property.

11 **Graffiti implement** shall mean an aerosol paint container, a broad-tipped marker, gum label,  
12 paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or  
13 leaving a visible mark on any natural or manmade surface.

14 **Mayor** shall mean the Mayor or any duly authorized representative or person designated by  
15 the Mayor.

16 **Owner** shall mean any person, agent, operator, firm or corporation having a legal or  
17 equitable interest in the property; or recorded as holding title to the property; or otherwise having  
18 control of the property, including the guardian of the estate of any such person and the executor or  
19 administrator of the estate of such person if ordered to take possession of real property by a court.

20 **Paint stick or graffiti stick** shall mean any device containing a solid form of paint, wax,  
21 epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a  
22 mark of at least one-eighth of an inch in width.

23 **Property** shall mean any real or personal property and that which is affixed, incidental or  
24 appurtenant to real property including but not limited to any structure, fence, wall, sign or any  
25 separate part thereof whether permanent or not.

26 Section 4. That Title 8 of the Lincoln Municipal Code be amended by adding a new  
27 section numbered 8.52.040 to read as follows:

1     **8.52.040       Prohibited Acts.**

2             It shall be unlawful for any person to apply graffiti to any natural or man-made  
3 surface on any public or private building or structure without authorization of the owner.

4             Section 5. That Title 8 of the Lincoln Municipal Code be amended by adding a new  
5 section numbered 8.52.050 to read as follows:

6     **8.52.050       Graffiti as a Nuisance; Prohibited.**

7             (a)     Graffiti prohibited. The existence of graffiti on public or private property which is  
8 visible from public property or public right-of-way is in violation of this chapter and is declared to  
9 be a public nuisance and is subject to the removal and abatement provisions specified in this chapter.

10            (b)     Notice to remove. It shall be the duty of every owner of property within the city and  
11 within three miles of the corporate limits of the city to keep their property free from graffiti that is  
12 visible to public property or public right-of-way.

13            (c)     Notice and order to abate. Whenever it shall come to the knowledge of the Mayor  
14 that there exists upon property the nuisance of graffiti, the Mayor shall cause a written notice of  
15 violation and order to abate and remove said nuisance within fifteen days to be served upon the  
16 owner. Said notice shall include:

17                   (1)     A description of the property sufficient for identification including a street  
18 address or legal description or both;

19                   (2)     A statement that the property is a graffiti nuisance property with a concise  
20 description of the conditions leading to the finding;

21                   (3)     A statement that the graffiti must be removed within fifteen days after receipt  
22 of the notice and that if the graffiti is not removed within that time the City will declare the property  
23 to be a public nuisance subject to the abatement procedures set forth in this section;

24                   (4)     A statement that the owner has a right to appeal;

25                   (5)     A statement of the City's right to file a lien to recover the costs of abatement  
26 if the owner fails to remove the graffiti.

27            (d)     Method of service. The Mayor may serve the notice and order as follows:

1           (1)    By personal service to the owner, or  
2           (2)    By certified mail, postage prepaid, return receipt requested to the owner;  
3           (3)    If the notice and order is returned showing that the letter was not delivered,  
4 a copy thereof shall be posted in a conspicuous place in or about the property affected by the notice  
5 and said notice shall be considered proper service.

6           (e)    Transfer of ownership. It shall be unlawful for any owner of property who has  
7 received a notice of violation and order to sell, transfer, mortgage, lease or otherwise dispose of the  
8 property to another until the provisions of the notice of violation and order have been complied with,  
9 or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any  
10 notice of violation and order issued by the Mayor and shall furnish to the Mayor a signed and  
11 notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of  
12 such notice of violation and order and fully accepting the responsibility for removing the graffiti as  
13 required by such notice of violation and order.

14          (f)    Extension of time for removal. The Mayor shall have the authority to extend the  
15 period for compliance but in no case shall any extension of time for compliance amount to a total  
16 time of more than twenty-five days.

17          (g)    Consent of owner for removal. An owner may have the City remove the graffiti at  
18 the owner's expense upon the mutual consent of both the City and owner and upon the City's receipt  
19 of written consent to enter and remove the graffiti and a waiver of liability from the owner. The  
20 Mayor may prepare and distribute forms for this purpose.

21          (h)    Abatement by City. If such owner shall have failed or refused to abate and remove  
22 the graffiti at the expiration of the date fixed in the notice and order, the Mayor may cause such  
23 graffiti nuisance to be removed from such property and shall prepare a statement to the owner of a  
24 statement of the actual costs incurred in the abatement and removal and shall deliver same for  
25 payment upon said owner to be paid within thirty days of service. If not paid within thirty days, the  
26 costs shall be assessed as a lien as provided in (i) below.

1           (i)     Assessment of Cost. Any and all costs incurred by the City in the abatement of the  
2 graffiti shall constitute a lien against the property upon which said graffiti existed. The Mayor shall,  
3 not later than the fifteenth day of September of each year, report to the City Council on all real estate  
4 cleared of graffiti since September 1 of the previous year under the provisions of this chapter,  
5 together with costs thereof. Whereupon, the City Council, after public hearing at a regular City  
6 Council meeting, shall by resolution assess the costs against such property; provided that notice of  
7 the time of such meeting of the City Council for making such assessment and for the purpose of such  
8 meeting shall be published once in a newspaper published and of general circulation in the city at  
9 least five days before said meeting of the Council is held, or in lieu thereof, notice may be given to  
10 the owners of such property by personal service thereof five days before such hearing. Any such  
11 assessment shall be a lien upon such property from the date of assessment and shall be collected in  
12 the same manner as general taxes. Such assessment shall be delinquent after December 1 following  
13 the date of assessment and shall draw interest as provided in Neb. Rev. Stat. § 45-104.01 for  
14 assessments. Nothing herein shall prevent the City from accepting payment or collecting for the  
15 related costs by any other means permitted by law.

16           Section 6. That Title 8 of the Lincoln Municipal Code be amended by adding a new  
17 section numbered 8.52.060 to read as follows:

18     **8.52.060       Means of Appeal.**

19           (a)     Application for appeal. Any owner receiving a notice and order to abate graffiti on  
20 his or her property shall have the right to appeal to the Graffiti Appeals Board provided that a \$50.00  
21 filing fee and a written application for appeal is filed within ten days after the date the notice and  
22 order was served.

23           (b)     Effect of failure to appeal. Failure of any person to file an appeal shall constitute a  
24 waiver of the right to an administrative hearing and adjudication of the notice of violation and order  
25 or to any portion thereof.

26           (c)     Scope of hearing on appeal. The hearing shall be conducted for purposes of  
27 determining whether the conditions constitute graffiti as a public nuisance under this chapter.

1           (d)     Membership of Board. The Graffiti Appeals Board shall consist of a minimum of  
2     three members who are not employees of the City of Lincoln. The Board shall annually select one  
3     of its members to serve as chairman. The Mayor shall be an ex-officio member but shall not vote  
4     on any matter before the Board. The Board shall be appointed by the Mayor and appointments shall  
5     be for three-year terms.

6           (e)     Secretary. The Mayor shall designate a qualified person, who may be an employee  
7     of the City of Lincoln, to serve as secretary to the Board. The secretary shall keep a detailed record  
8     of all proceedings in the office of the Mayor.

9           (f)     Notice of hearing. The Board shall meet upon notice from the chairman, within ten  
10    days of the filing of the appeal. The Mayor shall provide notice of the time and place of the hearing  
11    to the appellant at least five days prior to the scheduled hearing date.

12          (g)     Hearing. The owner, the owner's representative, the Mayor and any person whose  
13    interests are affected shall be given an opportunity to be heard. All three members of the board must  
14    be present for a hearing.

15          (h)     Hearing procedure. The hearing need not be conducted according to the technical  
16    rules of evidence and witnesses. The person requesting the hearing, the Mayor and the Board may:

17               (1)     Call and examine witnesses on any matter relevant to the issues of the  
18    hearing;

19               (2)     Introduce documentary and physical evidence;

20               (3)     Cross examine opposing witnesses on any matter relevant to the issues of the  
21    hearing; and

22               (4)     Rebut evidence.

23          (i)     Board decision. The Board may uphold, reverse, or modify the notice and order of  
24    the Mayor by a concurring vote of a majority of the total number of appointed Board members.

25          (j)     Records and copies. The proceedings of the hearing and the decision of the Board  
26    shall be recorded by tape recording or other means of permanent recording determined appropriate  
27    by the Board. The proceedings at the hearing shall also be reported by a phonographic reporter if

1 requested by any party thereto. A transcript of the proceedings shall be made available to all parties  
2 upon request and upon payment of the fee prescribed therefor. Such fees may be established by the  
3 Board, but shall in no event be greater than the cost involved. Copies of the Board's decision shall  
4 be furnished to the owner and to the Mayor.

5 (k) Appeals. Appeals of the Board's decision shall be filed in accordance with state law.

6 (l) Stays of enforcement. Appeals of notice and orders shall stay the enforcement of the  
7 notice and order until the appeal is heard by the Graffiti Appeals Board.

8 Section 7. That Title 8 of the Lincoln Municipal Code be amended by adding a new  
9 section numbered 8.52.070 to read as follows:

10 **8.52.070 Duties and Powers of the Mayor.**

11 (a) The Mayor shall have the authority to enforce the provisions of this code and shall  
12 have the authority necessary to adopt and promulgate rules and procedures to implement provisions  
13 of this code not inconsistent with the Charter or with the Lincoln Municipal Code or state statute.  
14 Such rules shall not have the effect of waiving abatement requirements.

15 (b) The Mayor is authorized to enter the property at reasonable times to inspect for  
16 graffiti subject to constitutional restrictions on unreasonable searches and seizures. If entry onto  
17 property is refused or not obtained, the Mayor is authorized to pursue recourse as provided by law.  
18 The Mayor shall carry proper identification when inspecting property or premises in the performance  
19 of duties under this code.

20 Section 8. That Title 8 of the Lincoln Municipal Code be amended by adding a new  
21 section numbered 8.52.080 to read as follows:

22 **8.52.080 Violations.**

23 (a) Prosecution of violation and penalties. Any person who violates any provision of  
24 Section 8.52.040 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be  
25 fined in any sum not to exceed \$500.00, or be imprisoned in the county jail for a period not to  
26 exceed six months, or both, except that each person so convicted shall be fined in a sum of not less  
27 than \$200.00 for the first offense, not less than \$250.00 for the second offense, and not less than

1     \$300.00 for the third offense and each offense thereafter. The penalty provided herein shall be  
2     cumulative with and in addition to revocation, cancellation or forfeiture of any license, permit or  
3     right elsewhere provided for violation thereof or as provided by law. Each day that a violation of  
4     this chapter continues shall constitute a separate and distinct offense and shall be punishable as such.

5             A court, upon finding a person guilty of any violation of this chapter, may in addition to fines  
6     or imprisonment, order such convicted person to make restitution to any persons for damage to such  
7     person's property.

8             (b) Abatement of violation. The imposition of penalties herein prescribed shall not  
9     preclude the City from instituting appropriate action to restrain, correct or abate the graffiti.

10            Section 9. That Title 8 of the Lincoln Municipal Code be amended by adding a new  
11     section numbered 8.52.090 to read as follows:

12     **8.52.090       Severability**

13            Each section and subsection of this chapter is hereby declared to be independent of every  
14     other section or subsection of this chapter and invalidity of any section or subsection of this chapter  
15     shall not invalidate any other section or subsection thereof.

16            Section 10. That Sections 1 through 9 of this ordinance shall be codified in the  
17     Lincoln Municipal Code as Chapter 8.52 entitled "Graffiti Abatement Act."

18            Section 11. That this ordinance shall take effect and be in force from and after its  
19     passage and publication according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_\_ day of \_\_\_\_\_, 2006:

\_\_\_\_\_  
Mayor